

**United States Department of Labor
Employees' Compensation Appeals Board**

P.G., Appellant

and

**U.S. POSTAL SERVICE, THOUSAND OAKS
POST OFFICE, Thousand Oaks, CA, Employer**

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**Docket No. 20-0348
Issued: April 13, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 17, 2019 appellant filed a timely appeal from a June 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 28, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2019, as he no longer had residuals or disability causally related to his accepted June 25, 2018 employment injury.

FACTUAL HISTORY

On June 25, 2018 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day he struck his forehead on his postal vehicle and lost consciousness while in the performance of duty. He stopped work that same day. OWCP accepted appellant's claim for concussion with loss of consciousness of 30 minutes or less, initial encounter. On July 13, 2018 the Department of Motor Vehicles (DMV) suspended his motor vehicle license due to his condition characterized by a lapse of consciousness effective July 17, 2018. In a letter of separation dated July 20, 2018, the employing establishment notified that appellant was being separated from employment effective that day for a failure to meet expectations in performing his duties. Appellant was separated from employment on July 20, 2018.

Appellant was hospitalized from July 2 through 5, 2018 for evaluation of a head injury sustained on June 25, 2018 when he struck his forehead on his postal vehicle and briefly lost consciousness. He underwent an electroencephalogram (EEG), a magnetic resonance imaging (MRI) scan of the brain, and a computerized tomography of the head on July 2, 2018 which were all normal. Appellant received medical treatment in follow up for his concussion and headaches from several attending physicians, including Dr. Joey Liu, Board-certified in family medicine, on July 23 and November 14, 2018. Dr. Liu diagnosed postconcussion syndrome and advised that appellant was disabled from work. In his November 14, 2018 report, he noted evaluating appellant for mental dullness, headaches, and insomnia arising from the June 25, 2018 injury and recommended evaluation by a neurologist.

Appellant filed a claim for compensation (CA-7) for total disability for the period beginning August 5, 2018.

On November 20, 2018 appellant was evaluated by Dr. Bahram Tabibian, a Board-certified neurologist, for headaches, neck pain, low back pain, behavioral changes, and dizziness after a June 25, 2018 incident at work where appellant had momentary loss of consciousness. Mental status examination revealed that he was alert and oriented and had normal speech, normal remote and immediate memory, intact sensory and motor examination, normal gait, and both pupils were equal and reactive to light. Dr. Tabibian diagnosed history of transient loss of consciousness, postconcussion syndrome, history of transverse sinus thrombosis, headache and dizziness with an unknown etiology, one episode of transient mental confusion on July 1, 2018 with an unknown etiology, and history of possible and probable mental illness. He recommended an EEG and a brain MRI scan.

On December 19, 2018 OWCP referred appellant to Dr. Thomas P. Di Julio, a Board-certified psychiatrist and neurologist, for a second opinion examination. It requested that he evaluate whether appellant continued to have residuals/disability causally related to appellant's accepted June 25, 2018 employment injury.

In a January 30, 2019 report, Dr. Di Julio noted that he had reviewed a statement of accepted facts and appellant's medical history and records. Appellant reported that on June 25, 2018 he hit his head on the top of his mail truck and briefly lost consciousness. He sought treatment at an urgent care facility and was released. Appellant's symptoms of headaches and periods of confusion continued and on July 2, 2018 he drove off a freeway and struck a bush. He was admitted to the emergency room due to having "vacant spells." Dr. Di Julio noted that appellant's license was suspended as a result of this incident, but it was reinstated a few months later. On physical examination, he reported that appellant was alert and cooperative, in no acute distress. Appellant's visual fields were intact to confrontation and his extraocular movements were full. Dr. Di Julio advised that appellant's pupils were three millimeter and reactive to light, and appellant's facial symmetry and strength were normal. He reported that motor and sensory examination was normal, reflexes were intact, and appellant had full range of motion of the back and extremities. Dr. Di Julio noted an impression of blunt head trauma resulting in cerebral concussion on June 25, 2018 and panic attacks. He advised that appellant had subjective complaints of panic attacks, transient headaches, and insomnia, but found no objective findings that correlated with appellant's complaints. Dr. Di Julio diagnosed blunt head trauma with an episode of loss of consciousness lasting only seconds or minutes, postconcussive syndrome resolved, and panic attacks linked to preexisting psychiatric condition. He indicated that there was "no mention of panic attacks in the available record." Dr. Di Julio noted that although the etiology of panic disorder is unknown they have not been linked to postconcussive syndrome or head trauma and therefore the link to appellant's head injury on June 25, 2018 was unlikely. He further noted that appellant's accepted work-related conditions had resolved without residuals and may have resolved by late June 2018. Dr. Di Julio concluded that appellant had made a full recovery and advised that appellant was not restricted from performing his regular duties.

By decision dated February 20, 2019, OWCP denied appellant's claim for compensation.

On February 25, 2019 OWCP issued appellant a proposed notice to terminate his wage-loss compensation and medical benefits based on Dr. Di Julio's opinion that the accepted condition had ceased without residuals. It afforded appellant 30 days to submit additional evidence or argument challenging the proposed action.

In response, appellant submitted a statement asserting that his employment position was solely a driving position and legally he had not been permitted to drive from July 17, 2018 to the reinstatement of his license on November 21, 2018. He sought compensation for the period of time that he could not have legally or physically returned to his driving position. Appellant submitted a copy of a DMV order of suspension revoking his privileges to operate a motor vehicle effective July 17, 2018 and a November 21, 2018 DMV order of reinstatement of his driving privileges.

OWCP continued to receive additional evidence. A November 20, 2018 MRI scan of the brain revealed no abnormalities.

A December 1, 2018 report from Dr. Tabibian noted appellant's episodes of panic attacks and headaches. He performed an EEG, which was borderline nonfocal normal and reiterated diagnoses.

On February 22, 2019 Dr. Tabibian reviewed Dr. Di Julio's January 30, 2019 report and diagnosed history of head trauma and subsequent transient loss of consciousness, postconcussion syndrome, and cervical myofasciitis. He noted that appellant continued to have infrequent panic attacks and headaches at least twice per week. Dr. Tabibian disagreed with Dr. Di Julio's opinion that appellant's panic attack were not related to the accepted employment injury. He agreed that appellant's mental illness could have been aggravated after the head trauma due to an underlying existing condition that he had for 10 years reported as chronic depression. Dr. Tabibian noted that appellant's previous history of mental illness resulted in more symptoms than what would have been seen in a normal patient with head trauma. He opined that appellant's head trauma and subsequent symptoms were not resolved and appellant still suffered from symptoms of cerebral concussion. Dr. Tabibian advised that appellant could not return to his job without restrictions precluding working around machinery or heights due to his panic attacks.

By decision dated June 28, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 29, 2019. It found that the weight of the medical evidence was represented by the opinion of Dr. Di Julio.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2019.

³ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

OWCP based its termination of appellant's wage-loss compensation and medical benefits on the January 30, 2019 report of Dr. Di Julio, OWCP's referral physician.

Dr. Di Julio reported the findings of the evaluation he conducted on that date. He noted appellant's continued symptoms of headaches and periods of confusion. Dr. Di Julio noted subjective complaints of panic attacks, transient headaches, and insomnia, but found no objective findings that correlated with his complaints. He diagnosed blunt head trauma with an episode of loss of consciousness lasting only seconds or minutes, postconcussive syndrome resolved, and panic attacks linked to preexisting psychiatric condition. Dr. Di Julio further noted that appellant's accepted work-related conditions had resolved without residuals. He concluded that appellant had made a full recovery and advised that he was not restricted from performing his regular duties.

The Board finds, however, that Dr. Di Julio's opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant no longer had residuals or disability due to his June 25, 2018 employment injury.⁸ In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality.⁹ The factors that determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.¹⁰

The Board finds that Dr. Di Julio's report lacks sufficient medical reasoning to establish that appellant's accepted conditions had resolved. Dr. Di Julio noted that appellant reported episodes of confusion, specifically an incident on July 2, 2018 when he drove off a freeway and struck a bush and was hospitalized for "vacant spells." He noted that appellant's license was suspended as a result of this incident, but it was reinstated a few months later. However, Dr. Di Julio failed to address whether the loss of license and inability to work for a period of time was due to the accepted employment injury. He noted that appellant had a continuing diagnosis of panic attacks linked to preexisting psychiatric condition, however, he failed to provide sufficient rationale for his opinion that the panic attacks were not caused or at least aggravated by the accepted employment injury. Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.¹¹ Additionally, Dr. Di Julio noted that there was no mention of panic attacks in the available record, however, it does not appear that he ever reviewed any of Dr. Tabibian's reports, which document continuing panic attacks in detail and explain why he believed that they were related to his accepted employment-related condition. Furthermore, Dr. Di Julio failed to adequately explain in his January 30, 2019 report why appellant could perform his regular work as a letter carrier working around machinery and heights given appellant's symptoms of cerebral concussion and panic attacks. He did not

⁸ See *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.B.*, Docket No. 18-0700 (issued January 9, 2019); *S.J.*, Docket No. 17-0543 (issued August 1, 2017).

⁹ *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

¹⁰ *A.G.*, *supra* note 6; *James T. Johnson*, 39 ECAB 1252 (1988).

¹¹ *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

provide an opinion with sufficient medical reasoning to establish that appellant no longer had residuals or disability due to his accepted June 25, 2018 employment injury.¹² Thus, the Board finds that this report does not contain adequate medical rationale in support of its opinion that appellant ceased to have residuals of his accepted employment conditions and therefore is insufficient to serve as the basis for OWCP's termination action.¹³

For these reasons, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2019.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2019.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² *J.W.*, *supra* note 8; *S.B.*, *supra* note 8; *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

¹³ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).